

**STATE OF MINNESOTA
IN COURT OF APPEALS**

A20-1294

A20-1295

A20-1296

Minnesota Voters Alliance, et al.,
Appellants,

vs.

County of Ramsey, et al.,
Respondents (A20-1294),

County of Olmsted, Minnesota Board of Commissioners, et al.,
Respondents (A20-1295),

City of Duluth, et al.,
Respondents (A20-1296).

Filed June 7, 2021
Affirmed
Smith, Tracy M., Judge

Ramsey County District Court
File No. 62-CV-20-4124

Olmsted County District Court
File No. 55-CV-20-4446

St. Louis County District Court
File No. 69DU-CV-20-1252

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Considered and decided by Smith, Tracy M., Presiding Judge; Ross, Judge; and Connolly, Judge.

SYLLABUS

Petitioners who failed to establish that county and city governing bodies violated a duty clearly established by law when appointing deputy county auditors and deputy city clerks to absentee ballot boards under Minn. Stat. § 203B.121 (2020) are not entitled to a writ of mandamus.

OPINION

SMITH, TRACY M., Judge

These consolidated appeals challenge a district court order denying appellants' petitions for writs of mandamus against respondent governing bodies based on respondents' alleged failure to comply with statutory requirements governing the establishment of absentee ballot boards for the November 2020 general election. Because appellants failed to establish the first requirement for mandamus relief—that respondents violated an official duty clearly imposed by law—the district court did not abuse its discretion by denying the writs. We therefore affirm.

FACTS

In the summer of 2020, respondents—the governing bodies of Ramsey County, Olmsted County, and the City of Duluth—established absentee ballot boards for the November 2020 general election. Although their practices varied, respondents all

appointed to their ballot boards election judges as well as staff appointed and trained to process and count absentee ballots. The staff were appointed under a statutory provision authorizing governing bodies to appoint “deputy county auditors” and “deputy city clerks” to serve on ballot boards. *See* Minn. Stat. § 203B.121, subd. 1(a). Before appointing deputies to their ballot boards, both Duluth and Ramsey County exhausted the lists that were submitted by the major political parties for purposes of appointing precinct election judges under Minn. Stat § 204B.21 (2020); at the district court hearing on appellants’ petitions, Olmsted County described its then-ongoing efforts to recruit election judges to its ballot board. Of the three governing bodies, only Olmsted County obtained statements of political-party affiliation or non-affiliation from the persons appointed as deputies to its ballot board.

Appellants—the Minnesota Voters Alliance (MVA), the Republican Party of Minnesota, and several individuals—filed petitions for writs of mandamus in the district court, contending that respondents were violating Minnesota election laws in establishing their absentee ballot boards. The matters were consolidated, and, following briefing, the district court held a hearing on August 26, 2020. In an order filed on September 24, 2020, the district court concluded that petitioners had satisfied none of the requirements for mandamus and denied relief.

This appeal follows.

ISSUES

- I. Is this appeal moot?
- II. Did the district court abuse its discretion by denying mandamus relief?

ANALYSIS

In the district court, appellants alleged that respondents engaged in a number of election-law violations when making appointments to their absentee ballot boards, but they have narrowed their challenges on appeal. Here, they argue that, contrary to the ruling of the district court, respondents violated Minnesota’s election laws in three ways: (1) by failing to exhaust major-political-party lists of potential election judges when appointing deputies to the absentee ballot boards, (2) by not appointing “bona fide” deputy county auditors and deputy city clerks to the absentee ballot boards, and (3) by failing to obtain a statement of party affiliation from the deputies appointed by respondents to the absentee ballot boards.

Respondents contend that this appeal is moot because the 2020 general election has occurred and we cannot grant the requested relief. They also argue that, even if the appeal is not moot, they did not violate the election laws in establishing their absentee ballot boards and that the district court properly denied mandamus. We begin with the question of mootness.

I. The appeal is not moot.

Justiciability is an issue of law, which appellate courts review de novo. *Dean v. City of Winona*, 868 N.W.2d 1, 4 (Minn. 2015). In the context presented here, the justiciability question is one of mootness. If there is no effectual relief for a court to grant, an issue is deemed to be moot. *In re Schmidt*, 443 N.W.2d 824, 826 (Minn. 1989). An appeal will be dismissed as moot if “pending an appeal, an event occurs which makes a decision unnecessary.” *Peterson v. Humphrey*, 381 N.W.2d 472, 475 (Minn. App. 1986), *review*

denied (Minn. Apr. 11, 1986). Courts may invoke an exception to the mootness rule when the issue presented is “capable of repetition yet evading review.” *Schmidt*, 443 N.W.2d at 826.

Respondents argue that this appeal is moot because appellants’ petitions seek relief regarding the administration of the November 2020 general election and that election has already occurred. Appellants counter that an exception to the mootness rule applies. They assert that the issues presented are capable of repetition because the governing bodies will again establish ballot boards before the next election. And they assert that the issues will evade review because the timing of the establishment of the ballot boards—in the summer before an election—will continue to result in appellate decisions not being rendered until after the election has occurred.

We agree with appellants that this exception to the mootness rule applies. Although appellants’ petitions were expeditiously heard and decided by the district court and appellants timely filed their appeal, an appellate decision was not available until after the election was over. Because future absentee ballot boards will be established and because an appellate decision may again not be attainable before the election is held, the issues are capable of repetition yet evading review.

Respondents argue that, even though future absentee ballot boards will be established, judicial review will not be evaded because appellants will have other legal avenues for challenging the composition of the boards. But that argument goes to the substantive question of whether appellants are entitled to mandamus; as discussed below, one of the requirements for mandamus is the absence of an adequate legal remedy. But, at

this initial point, we are determining whether to decide this case, not whether mandamus should issue. We are persuaded that the issues presented are capable of repetition yet evading review. We therefore choose to decide this case, and we turn to the substantive question of whether the district court abused its discretion by denying mandamus.

II. The district court did not abuse its discretion by denying mandamus relief.

“Mandamus is an extraordinary remedy.” *N. States Power Co. v. Minn. Metro. Council*, 684 N.W.2d 485, 491 (Minn. 2004). A district court may issue a writ of mandamus to compel an official to perform “an act which the law specially enjoins as a duty resulting from” the official’s position. Minn. Stat. § 586.01 (2020). A petitioner seeking mandamus bears the burden of proving that the petitioner is entitled to relief. *See Breza v. City of Minnetrista*, 725 N.W.2d 106, 109-10 (Minn. 2006). The petitioner must show that (1) the official “failed to perform an official duty clearly imposed by law,” (2) the petitioner “suffered a public wrong” and was “specifically injured” by the official’s failure to perform that official duty, and (3) the petitioner has no adequate legal remedy. *Id.* (quotations omitted).

We review the denial of a writ of mandamus for an abuse of discretion. *See Coyle v. City of Delano*, 526 N.W.2d 205, 207 (Minn. App. 1995). We will reverse a district court’s order on a petition for mandamus “only when there is no evidence reasonably tending to sustain the [district] court’s findings.” *Id.* (citation omitted).

We begin with the first requirement for mandamus—the failure to perform an official duty clearly imposed by law—which is dispositive of our analysis. This requirement is satisfied “only when the petitioner has shown the existence of a legal right

to the act demanded which is so clear and complete as not to admit any reasonable controversy.” *In re Welfare of Child of S.L.J.*, 772 N.W.2d 833, 838 (Minn. App. 2009) (quotation omitted).

As described above, appellants contend that respondents failed to perform their duty in appointing persons to their absentee ballot boards in three ways. Whether any of the alleged violations occurred turns on the meaning of two statutes—Minnesota Statutes section 203B.121, which governs ballot boards, and section 204B.21, which governs the appointment of election judges. We review issues of statutory interpretation *de novo*. *See State v. Thonesavanh*, 904 N.W.2d 432, 435 (Minn. 2017). The object of statutory interpretation is to “ascertain and effectuate the intention of the legislature.” *Linn v. BCBSM, Inc.*, 905 N.W.2d 497, 501 (Minn. 2018) (quoting Minn. Stat. § 645.16 (2016)). “If the Legislature’s intent is clear from the statute’s plain and unambiguous language, then we interpret the statute according to its plain meaning without resorting to the canons of statutory construction.” *Id.* (quotation omitted).

Exhaustion of Major-Political-Party Lists for Election Judges

Appellants first contend that respondents violated a clear duty to exhaust major-political-party lists for the appointment of election judges before appointing deputy county auditors and deputy city clerks to their absentee ballot boards.¹ We are not persuaded.

¹ Although two respondents did exhaust the political-party lists submitted for the appointment of election judges when making appointments to their ballot boards, no respondent agrees with appellants that it was required by law to do so.

Section 203B.121 provides as follows with respect to the establishment of ballot boards:

The governing body of each county, municipality, and school district with responsibility to accept and reject absentee ballots must, by ordinance or resolution, establish a ballot board. The board must consist of a sufficient number of election judges trained in the handling of absentee ballots and appointed as provided in sections 204B.19 to 204B.22. The board may include deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.

Minn. Stat. § 203B.121, subd 1(a). The last sentence authorizes governing bodies to appoint deputy county auditors or deputy city clerks to their ballot boards. But appellants argue that the previous sentence—stating that the board must consist of a “sufficient number of election judges . . . appointed as provided in sections 204B.19 to 204B.22”—precludes governing bodies from appointing deputy county auditors or deputy city clerks until the governing bodies have first exhausted the lists that the major political parties submit for the appointment of election judges.

To find this exhaustion requirement, appellants turn to section 204B.21—the statute governing the appointment of precinct election judges. Subdivision 1 of that statute directs that, in any year in which there is an election for partisan political office, each major political party must submit to the secretary of state a list of eligible voters to act as election judges in each of the precincts. Based on that information, lists of potential election judges are provided to the municipality or county, naming the eligible individuals and noting their party affiliation. Subdivision 2 then provides that the governing bodies appointing election judges for precincts must first exhaust those lists before appointing election judges from

other sources. Appellants construe subdivision 2 to mean that the major-political-party lists submitted for the recruitment of election judges must also be exhausted by governing bodies establishing their absentee ballot boards before appointing deputies to the boards.

It is true that section 203B.121 refers to election judges “appointed as provided in sections 204B.19 to 204B.22” and that section 204B.21 requires that major-political-party lists of eligible voters be supplied and then exhausted by cities and counties when appointing persons as election judges. But section 204B.21 says nothing about the appointment of persons to ballot boards. In addition, though section 203B.121 provides that a ballot board “must consist of a sufficient number of election judges,” it also provides that the board “may include deputy county auditors or deputy city clerks.” Minn. Stat. § 203B.121, subd. 1(a). And section 203B.121 says nothing about exhausting the major-political-party lists used in the appointment of election judges before appointing deputies to a ballot board.

By their plain language, neither section 204B.21 nor section 203B.121 clearly requires governing bodies to exhaust partisan lists of election-judge candidates before appointing deputies to absentee ballot boards. Therefore, appellants have failed to demonstrate that any respondent violated an official duty clearly imposed by law by not exhausting political-party lists when appointing deputies to a ballot board.

“Bona Fide” Deputy County Auditors and Deputy City Clerks

Appellants also argue that respondents violated section 203B.121, subdivision 1(a) by not appointing “bona fide” deputy county auditors and deputy city clerks to their ballot boards. Their argument is unconvincing.

As noted above, section 203B.121, subdivision 1(a), authorizes governing bodies to appoint to their ballot boards “deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.” The election laws do not define “deputy county auditor” or “deputy city clerk.” Appellants look to other sources for their understanding of these terms.

As for the meaning of “deputy county auditors,” appellants look to Minnesota Statutes section 384.08 (2020). That statute provides:

Any county auditor may by certificate in writing appoint deputies who, before entering upon their duties, shall record with the county recorder such certificates, with their oaths of office endorsed thereon. Such deputies may sign all papers and do all other things which county auditors may do.

Relying on the phrase, “[s]uch deputies may sign all papers and do all other things which county auditors may do,” appellants argue that a person is a “bona fide” deputy county auditor for purposes of section 203B.121 only if the person has the plenary authority of the county auditor. “Bona fide” deputy county auditors, appellants asserted at oral argument, must have “supervisory authority” and be empowered to do all the other things that county auditors may do, such as perform work regarding taxes, real estate documents, and so on. Because “deputy county auditors” appointed to absentee ballot boards are not given the authority to perform all of the tasks that the county auditor may perform, appellants contend, those persons are not “bona fide” deputies.

We disagree. As an initial matter, to the extent that section 384.08 relates to section 203B.121, it does not provide a statutory definition of “deputy county auditors”; rather, it explains the *process* to appoint a deputy county auditor. For example, it requires

deputy county auditors to record a certificate with the county recorder and to swear an oath of office before undertaking their duties. Minn. Stat. § 384.08. Moreover, while section 384.08 provides that deputy county auditors “may” perform the functions of a county auditor, nothing in that statute requires that every deputy be empowered to perform all of the duties of a county auditor. *See id.* Appellants therefore have not shown that respondent counties violated an official duty clearly imposed by law by appointing to their ballot boards deputy county auditors who did not have the full authority of the county auditor.

As for the meaning of “deputy city clerks,” appellants assert that a “deputy city clerk” incorporates the “common understanding and definition of ‘deputy’” as reflected in various dictionary definitions of “deputy.” At oral argument, counsel clarified that it is a “reasonable interpretation that ‘deputy city clerk’ also has to do all the things which [city clerks] may do.” We understand appellants’ argument about the definition of “deputy city clerks” to be similar to their argument about the definition of “deputy county auditors”—that is, that deputy city clerks are “bona fide” only if they are able to do all the things that the city clerk may do. That is not a reasonable interpretation. We discern no clear duty imposed by the election laws on respondent city to appoint to its ballot board only deputy city clerks who enjoy the full authority to perform all of the duties of the city clerk.

Appellants have failed to demonstrate that respondents violated an official duty clearly imposed by law by appointing to their ballot boards deputies who are not authorized to perform the full duties of a county auditor or city clerk.

Disclosure of Party Affiliation

Appellants also contend that deputies appointed to and serving on absentee ballot boards effectively become election judges and that respondents failed to perform their clear duties by not requiring deputies to disclose their party affiliation or non-affiliation as election judges must do. Again, we disagree.

Section 203B.121, subdivision 1(a), provides that an absentee ballot board may comprise both election judges and deputies as members. As to election judges, section 203B.121, subdivision 1(a), states that election judges appointed to ballot boards must be “trained in the handling of absentee ballots and appointed *as provided in sections 204B.19 to 204B.22.*” (Emphasis added.) Section 204B.21, subdivision 2, in turn, requires that persons appointed as election judges provide a statement of political-party affiliation or non-affiliation.

But section 203B.121, subdivision 1(a), makes no reference to sections 204B.19 to 204B.22 when addressing the appointment of deputy county auditors or deputy city clerks to ballot boards. As to deputies, subdivision 1(a) states: “The board may include deputy county auditors or deputy city clerks who have received training in the processing and counting of absentee ballots.” *Id.* Thus, by its plain language, while subdivision 1(a) requires that election judges appointed to ballot boards have been appointed as election judges pursuant to the statutory provisions governing election judges, it imposes no such requirement on deputies appointed to ballot boards. We will not add “words or meaning to a statute that are purposely omitted or inadvertently overlooked.” *Premier Bank v. Becker Dev., LLC*, 785 N.W.2d 753, 760 (Minn. 2010) (quotation omitted).

Moreover, the conclusion that deputies appointed to ballot boards do not become election judges governed by section 204B.21 is reinforced by other language in section 203B.121. In multiple places, section 203B.121 refers to “members of the ballot board” when describing the duties and responsibilities of the ballot board. *See* Minn. Stat. § 203B.121, subds. 2(a)-(c), 4, 5(a)-(c). In two places, the statute refers to “election judges” performing ballot-board duties. *See id.*, subd. 2(a), (b)(3). “When the Legislature uses different words,” appellate courts “normally presume that those words have different meanings.” *Nelson v. Schlener*, 859 N.W.2d 288, 294 (Minn. 2015). Thus, we may presume that “members” refers to all members of a ballot board—members who are deputies as well as members who are election judges—and that “election judges” refers only to those members of the ballot board who are election judges. Because only election judges are governed by section 204B.21’s requirement to disclose party affiliation or non-affiliation, members of the ballot boards who are deputies are not clearly required to disclose that information.

Appellants thus have failed to demonstrate that respondents violated an official duty clearly imposed by law to require deputies appointed to their ballot boards to disclose their party affiliation or non-affiliation.

Because appellants failed to establish that respondents violated an official duty clearly imposed by law, they have not satisfied the first requirement for a writ of mandamus. *See Breza*, 725 N.W.2d at 109-10. We therefore need not evaluate whether the two other requirements for mandamus are met.

DECISION

Appellants failed to establish that respondents violated any clearly imposed duty when appointing members to their ballot boards pursuant to Minn. Stat. § 203B.121, subd. 1(a). Because appellants did not satisfy the first requirement for a writ of mandamus, the district court did not abuse its discretion by denying mandamus.

Affirmed.